

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

JANIE SAMUEL, AS ADMINISTRATOR OF THE ESTATE OF CATHY LYNN TUBBS, et al.,	:	Case No. 1:02CV378
	:	JUDGE MICHAEL R. BARRETT
	:	
Plaintiff,	:	<u>DEFENDANTS HOOG AND</u>
	:	<u>LOTZ RESPONSE TO</u>
v.	:	<u>PLAINTIFFS' RULE 37(b)</u>
	:	<u>MOTION FOR SANCTIONS</u>
STEVEN M. HOOG, et al.,	:	
	:	
Defendants.		

Defendants Steven M. Hoog and Michael A. Lotz, in their individual capacities, submit this response in opposition to Plaintiffs' Motion for Sanctions Pursuant to F.R.C.P. 37(b). (Doc #64)

As alleged in Plaintiff's Motion, the initial request for records was served by way of a subpoena on the City of Cincinnati in September 2006. Assistant City Solicitor Peter Stackpole, who represents the defendants on behalf of the City, has coordinated retrieval of the records from the Cincinnati Fire Department. Joint Status reports filed on March 2, 2007, May 2, 2007 and June 15, 2007 indicate that the Plaintiffs were working with "the City" to complete discovery. (Doc #56, 58 and 60) During status conferences on June 21, 2007 and July 24, 2007, Mr. Stackpole stated that he was having difficulty obtaining the various records due to the manner in which the records were kept at the Fire Department. He also voiced concerns regarding potential HIPAA violations for the City of Cincinnati. As a result, the parties suggested that a Court Order would be necessary. On July 24, 2007, Mr. Stackpole submitted a joint proposed order to this Court.

Defendants Hoog and Lotz have not willfully ignored or failed to respond to the Court Order. Defendants Hoog and Lotz do not have custody or control of any of the records requested by the Plaintiffs. In fact, Special Counsel for Defendants Hoog and Lotz is in no better position to obtain these records than counsel for Plaintiffs. These defendants are literally at the mercy of the City of Cincinnati to provide the records. As the Plaintiffs have alleged punitive damages, it would be unfair to prevent Defendants Hoog and Lotz from presenting all available defenses because of the City's alleged failure to completely respond to the Court Order.

Therefore, Defendants Hoog and Lotz respectfully request this Court grant Plaintiff's alternative remedy to postpone the trial and pretrial deadlines.

Respectfully submitted,

/s/ Kimberly A. Rutowski

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Special Counsel for Defendants Hoog and Lotz
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CERTIFICATE OF SERVICE

I hereby certify on September 24, 2007 that a true and accurate copy of the foregoing was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system and copies will be mailed to those parties who are not served via the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Kimberly A. Rutowski

Kimberly A. Rutowski

(#0076653)